*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL–CIO *and* Cross-Link Inc. d/b/a Westar Marine Services.** Case 20–CC–3381–2

November 28, 2003

## DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

On March 31, 2003, Administrative Law Judge Clifford H. Anderson issued the attached decision. The Respondent filed exceptions and a supporting brief. The counsel for the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

### AMENDED CONCLUSIONS OF LAW

Substitute the following for paragraph 3 of the judge's conclusion of law.

"3. By threatening to cause a work stoppage on the Richmond-San Rafael Bridge Retrofit Project of the Tutor-Saliba/Koch/Tidewater Joint Venture, with an object to force or require the Joint Venture to cease doing business with Westar Marine Services, the Respondent violated Section 8(b)(4)(ii)(B) of the Act."

### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL–CIO, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Threatening to cause a work stoppage on the Richmond-San Rafael Bridge Retrofit Project of the Tutor-Saliba/Koch/Tidewater Joint Venture, with an object to force or require the Joint Venture to cease doing business with Westar Marine Services."

2. Substitute the following for paragraph 1(b).

"(b) In any like or related manner threatening, coercing, or restraining the Tutor-Saliba/Koch/Tidewater Joint Venture or Tutor-Saliba Corporation, where an object thereof is to force or require the Tutor-Saliba/Koch/Tidewater Joint Venture or Tutor-Saliba Corporation to cease doing business with Westar Marine Services."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. November 28, 2003

| | |
|---|---|
| Robert J. Battista, | Chairman |
| Peter C. Schaumber, | Member |
| Dennis P. Walsh, | Member |

(SEAL) NATIONAL LABOR RELATIONS BOARD

### APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent has also excepted to the judge's finding that Respondent Rrepresentative Roger Wilson called Project Superintendent Mike Green after the July 2002 meeting between the Respondent and Westar, and informed Green that the Respondent was going to try to "shut the job down on Monday." The record indicates that it was Westar port captain Bill Sherfy who contacted Green, not Wilson. The judge's error was harmless, however, because the Board does not require that a threat to shut down the job be communicated to a neutral employer in order to be unlawful. See, e.g., *Teamsters Local 247 (Rymco)*, 332 NLRB 1230, 1233 (2000) (and cases cited).

[2] We shall amend the judge's conclusions of law and modify his cease-and-desist order to conform to the violation alleged in the complaint and established at the hearing.

[3] See also *Operating Engineers Local 3 (Westar Marine Services)*, 340 NLRB No. 131 (2003), a companion case issued this day, finding reasonable cause to believe that the Respondent violated Sec. 8(b)(4)(D) of the Act by the conduct that is the subject of the instant proceeding.

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten to shut down the Richmond-San Rafael Bridge Retrofit Project of the Tutor-Saliba/Koch/Tidewater Joint Venture with an object to force the Joint Venture to cease doing business with Westar Marine Services.

WE WILL NOT in any like or related manner threaten, coerce, or restrain the Tutor-Saliba/Koch/Tidewater Joint Venture or Tutor-Saliba Corporation, where an object thereof is to force or require the Tutor-Saliba/Koch/Tidewater Joint Venture or Tutor-Saliba Corporation to cease doing business with Westar Marine Services.

OPERATING ENGINEERS LOCAL UNION NO. 3 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL–CIO

*Shelley Brenner, Esq.*, for the General Counsel.
*Paul D. Supton, Esq. (Van Bourg, Weinberg, Roger & Rosenfeld)*, of Oakland, California, for the Respondent.
*Mark D. Roberts, Esq.*, of Ontario, California, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard this case in trial in San Francisco, California, on November 18, 19, and 21, 2002, pursuant to a complaint and notice of hearing issued by the Acting Regional Director for Region 20 of the National Labor Relations Board on September 19, 2002. The complaint is based on a charge filed by Cross-Link, Inc. d/b/a Westar Marine Services (the Charging Party) against Operating Engineers Local Union No. 3 of the International Union of Operating Engineers AFL–CIO (the Respondent) on July 25, 2002, and docketed as Case 20–CC–3381–2.

The complaint, as amended at the hearing, alleges, and the answer denies, inter alia, that the Respondent, on or about July 2 or 3, 2002, by threatening a work stoppage, threatened, coerced, or restrained persons engaged in commerce or in industries affecting commerce with an object to force or require the Charging Party to recognize the Respondent as the representative of certain of its employees when it had not been certified as such representative by the Board in violation of Section 8(b)(4)(ii)(B) of the National Labor Relations Act (the Act).

On the entire record, including helpful briefs from the Respondent and the General Counsel, I make the following

### FINDINGS OF FACT[1]

#### I. JURISDICTION

The Charging Party is a California corporation with an office and place of business in San Francisco, California, and has for many years been in the business of providing tugboat, crew boat, and barge services in the San Francisco Bay. During the year ending June 30, 2002, the Charging Party, in conducting its business operations, purchased and received at its San Francisco, California facility goods valued in excess of $50,000 directly from points outside the State.

Tutor-Saliba Corporation, a California corporation with an office and place of business in Sylmar, California, has been at all times material engaged in the businesses of transportation contractor. During the year ending June 30, 2002, Tutor-Saliba Corporation, in conducting its business operations, purchased and received at its construction projects throughout California goods valued in excess of $50,000 directly from points outside the State.

Tutor-Saliba/Koch/Tidewater, J. V., a joint venture respecting which Tutor-Saliba Corporation is the managing partner, at all material times had an office and place of business in Richmond, California, and has been engaged as the general contractor for the Richmond-San Rafael Bridge Seismic Retrofit Project. During the year ending June 30, 2002, Tutor-Saliba/Koch/Tidewater, J. V. provided services to the State of California in conjunction with the Richmond—San Rafael Bridge Seismic Retrofit Project of a value in excess of $50,000.

Based on the above, there is no dispute and I find the Charging Party, Tutor-Saliba Corporation, and Tutor-Saliba/Koch/Tidewater, J. V, are, and each of them is, and have been at all times material, employers and persons engaged in commerce within the meaning of Section 2(1), (2), (6), and (7), and Section 8(b)(4)(ii)(B) of the Act.

#### II. LABOR ORGANIZATIONS

The record establishes, there is no dispute, and I find the Respondent and the International Organization of Masters, Mates, and Pilots[2] (the MM&P) are labor organizations within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### *A. Background*

The San Francisco Bay, comprising the geographical heart of California's San Francisco Bay Area, is a substantial body of water with various ports and commercial docks. It is crossed by various major bridges including the Richmond-San Rafael

[1] As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

[2] Attorney John M. Singleton, Albertini, Singleton, Gendler & Darby of Owings Mills, Maryland, moved to appear as counsel for the International Organization of Masters, Mates, and Pilots as an labor organization integrally involved in the dispute underlying the unfair labor practice allegations. The Respondent objected to the appearance, the General Counsel took no position, and the Charging Party supported the motion. I denied the motion as without legal precedent.

bridge. The Bay Area, while generally blessed with nature's favor is a seismically active area. With the improvement of seismic knowledge and engineering techniques, and in the knowledge of inevitable temblors to come, important structures have received and are receiving seismic retrofits to improve the structures' ability to withstand seismic events. One important aspect of that process is the current seismic retrofit of the major bridges crossing the Bay. One of the bridges currently experiencing a major retrofit is the Richmond-San Rafael Bridge.

The seismic retrofit of the Richmond-San Rafael Bridge (the Retrofit Project or Project) involves work undertaken at least in part from the foundations of the bridge and the waters it spans. Some of this work is done from marine vessels and other vessels are used to supply necessary transportation of personnel and materials to the project. Both tugboats and crew boats or water taxis are utilized as part of this operation. Tugboats are used to tow or push other vessels such as crane barges on the construction site and crew boats transport personnel to and from the construction sites.

The Tutor-Saliba Corporation and Tutor-Saliba/Koch/Tidewater, J. V. (the General Contractors), in master and project agreements, have contracted with various labor organizations for the retrofit work. Among those labor organizations is the Respondent. The Respondent from the beginning of the Project has provided under the agreements all boat operators and crews for the construction project employed by the General Contractors. The General Contractors, at least relevant to the work in question herein, did not have a contractual relationship with the International Organization of Masters, Mates, and Pilots.

The Charging Party has long provided tugboat, barge, and water taxi services in the San Francisco Bay and maintains a fleet of such vessels. For many years the operators and crew of the Charging Party's vessels have been exclusively represented by the International Organization of Masters, Mates, and Pilots. The Charging Party has never recognized the Respondent as the representative of any of its employees.

*B. Events*

The General Contractors for the Retrofit have contracted with the Charging Party for tugboats and crew boats. The Respondent's District representative and Dredge representative, Roger Wilson, testified without contradiction that he learned of the General Contractor's use of the Charging Party's vessels with their International Organization of Masters, Mates, and Pilots represented crews in mid-2001 and complained about the situation to General Contractor's supervision. He testified that he received assurances that the General Contractor was utilizing these vessels due to temporary unavailability of its own vessels and their Respondent represented crews. The use of the Charging Party's equipment and crews continued into 2002 and the Respondent continued to complain to the General Contractors regarding that use.

The Project expanded in the early spring of 2002 and the General Contractors in the following months utilized the Charging Party's vessels as well as its own. In April the Respondent's representative, Wilson telephoned the Charging Party's captain and principal, William "Bill" Sherfy, and sought a meeting to discuss entering into a contract for project bridge construction work.

On April 22, 2002, a meeting was held between Wilson, Sherfy, and the Charging Party's counsel, Mark Roberts, and two other Respondent representatives, Carl Goff and Bran Eubanks. There is no dispute that the Respondent sought the Charging Party to enter into a collective-bargaining agreement covering boat work on construction projects and suggested to the Charging Party that it was improperly doing work with MM&P employees that was properly done by employees represented by the Respondent and that the Charging Party's remuneration of employees performing such work was contrary to California State prevailing wage obligations. There is also no doubt that the Charging Party's representatives noted that its employees were and had long been represented by the MM&P and that the Charging Party did not believe that its employees desired to change unions. The Charging Party declined to enter into a contract with the Respondent.

Wilson and Sherfy had frequent telephone conversations thereafter with Wilson proposing agreements with varying language and Sherfy declining to sign. Wilson recurred to the theme that the Charging Party was in violation of prevailing wage provisions and at risk for making very substantial remedial payments for those violations. Wilson offered, if an agreement was entered into, to assist the Charging Party in obtaining the necessary backpayments from the Joint Venture.

On two occasions following this meeting, in early May and in late June, Wilson spoke by telephone with Roberts, requesting the Charging Party sign an agreement covering workboats. The conversations culminated with Roberts declining to sign an agreement and Wilson suggesting that the Charging Party and Roberts were making a mistake.

The Respondent filed a grievance under the Master Agreement with the General Contractors on May 7, 2002, challenging the use of the Charging Party's vessels staffed by employees not represented or dispatched by the Respondent. A copy of the grievance was mailed to the Charging Party. On May 8, 2002, the Joint Venture replied, with a copy to the Charging Party, that it did not regard the grievance as subject to the parties' grievance procedure because the Charging Party had assigned the work to "another union" and the dispute was therefore a jurisdictional dispute to be settled by the "Unions themselves." A few days later, the Respondent informed the Joint Venture that it would pursue the grievance without their participation.

During this period, the Respondent was also in ongoing communications with the California Department of Industrial Relations regarding prevailing wage issues for construction workboat wage rates on various Bay Bridge retrofit construction including the Project.

By letter dated July 1, 2002, to the Joint Venture from the Respondent and facsimile transmitted that same day, the Respondent notified the Joint Venture of a board of adjustment hearing to be held on July 18 respecting the grievance described above. On the same day, the Respondent filed an unfair labor practice against the Joint Venture respecting its refusal to process the Respondent's grievance. Also on that day, the Respondent arranged a meeting with the Charging Party for July 2 or 3.

On July 2 or 3, 2002, Wilson and the Respondent's director of contracts and industry relations, Robert Clark, met at the Charging Party's office with Sherfy and the Charging Party's vice president, David Morrow. The Respondent presented an agreement covering construction site boat work for the Charging Party's signature and the earlier arguments for and against the Charging Party's adoption of the agreement were revisited and expanded. Agreement was not reached and the meeting was coming to a conclusion when, as reflected below, the versions of events among the witnesses sharply diverges.

Sherfy testified that at the end of the meeting, when it was clear that no agreement was going to be concluded, he spoke to Wilson:

> And I said, well, Roger, this is coming to a head, what are we going to do, how's this going to happen? And I says, you know, we're no—I says, we're unable to sign this, what's going to happen? Roger said, there's going to be storm on Monday. I says, a storm, what does that mean? I said, are you going to shut down Tutor, are you going to shut down AGRA, and he said, we're going to start with Tutor, there's going to be a storm on Monday. So that was pretty much the end of the meeting, actually, and they left.

Morrow recalled the meeting's end:

> At that point the meeting was starting to break up, everybody was collecting their—whatever paperwork they had in front of them, and I recall Bill asking if they were going to shut down Tutor and AGRA at the Richmond/San Rafael Bridge. And I recall Mr. Wilson saying yes, and the meeting continued to break up, and I asked Mr. Wilson if—before the meeting broke up, I recall Mr. Wilson replying, yes, and that there's going to be a storm next week. And just as we were getting ready to leave, I remember asking Mr. Wilson that—asking him if the storm was going to be coming from the sky, and he looked at me and smiled, and the meeting broke up, and we shook hands and left.

The Respondent's representatives, Wilson and Clark, specifically and categorically denied that they were asked by the Respondent's agents if there was to be a shutdown of the work or that they responded to such a question directly or indirectly or in terms of the metaphor of a "storm" or its heavenly origins. Wilson did recall the following exchange near the meeting's end:

> Sherfy said, well, what if we don't sign? I said, well, we need to do something before the lid blows off this.
>
> Q. You did say that?
>
> A. Yes.
>
> Q. Did—what did you say after you said that?
>
> A. He said what do you mean by that? I said, we have a grievance filed against Tutor-Saliba in May. We've been sitting on it trying to resolve this for a long period of time. At some point, we are going to be instructed to have a Board of Adjustment and get resolution on this matter.
>
> Q. What else did you say on that subject, if anything, and what was his reply?
>
> A. He then asked me, well, what would that mean? I said, well, somebody would be accountable for the difference in monies between the prevailing rate and what's being paid out on these boats, and Tutor is signatory with us. We're going to approach them for that money. They, in turn, are going to come knocking on your door.

After the meeting Wilson called a representative of the Joint Venture, Mike Green, the Marine superintendent of the Project, and told Green that he had been told "there was going to be a storm on Monday . . . and that I felt that it meant that the Respondent was going to be trying to shut the job down on Monday."

No strike or shutdown occurred. The parties continued communications respecting the matter and further Board filings were made. At the time of the hearing a work jurisdictional hearing under Section 10(K) of the Act was pending at the regional level.

### *C. Analysis and Conclusions*

#### 1. Narrowing the issues

The instant complaint—the only matter before me regarding the parties—deals with the threat allegedly made at the end of the July 2 or 3 meeting as described above. It does not turn on the correctness of the parties' contentions respecting the work involved or on any ultimate disposition of the work dispute under other State or Federal proceedings.

This is so because, as the Act makes clear, a threat to shut down a general contractor's job in order to pressure a subcontractor to sign an agreement with a union covering the uncertified employees of the subcontractor is improper secondary conduct prohibited by the Act. *NLRB v Operating Engineers Local 825*, 400 U.S. 297, 304 (1971). And, while on construction projects, as here, the law allows contractual restrictions on subcontracting of work which the union may enforce through contractual processes and recourse to courts of law, self-help measures including strikes, picketing or strike threats in furtherance of such an object violate Section 8(b)(4)(ii)(B) of the Act. *Cahill Trucking Co.*, 277 NLRB 1286 (1985); *Associated Building & Contractors, Pacific Northwest Chapter v. NLRB*, 699 F.2d 488 (9th Cir. 1983).

#### 2. The arguments of the parties

The parties' arguments at trial and on brief largely addressed the disputed events of the July 2 or 3 meeting, what occurred, and what could have been fairly understood from the words spoken. Thus, the General Counsel argued at hearing and on brief, joined by the Charging Party at trial, that the agent of the Respondent, Wilson, frustrated by the repeated lack of success he experienced in convincing the Charging Party to sign a collective-bargaining agreement covering work the Respondent claimed, simply lost control when his efforts seemingly had failed once more and as the meeting ended, threatened to shut down the entire project the following Monday. The General Counsel and Charging Party argue that the Charging Party's agents who testified at the hearing be credited in full. The General Counsel further argues that there can be no question that the words used, i.e., "that a storm" was coming, was clearly a strike and/or closure threat and should be held as such as a matter of law. From this argument, based on the cases cited

above, the General Counsel further argues the Respondent violated Section 8(b)(4)(ii)(B) of the Act.

The Respondent too argues the credibility of its witnesses to the contested conversation advancing favorable estimations of their honesty and memory of events. But the Respondent goes further. Counsel emphasizes that the Respondent had at relevant times doggedly continued to take proper procedural steps to prevail in its dispute respecting the work in contest and that it simply had no motive to threaten a strike or a closure which, since it would not as a practical matter occur, would simply undermine the Respondent's integrity and determination in the eyes of the Charging Party and potentially violate the Act further complicating the Respondent's efforts to properly resolve the dispute in its favor. The Respondent emphasizes that there is no contention the Respondent had before this meeting threatened direct action or acted other than in a proper if perhaps dogged manner to advance its claims. In effect, the Respondent argues, since the Respondent had gone so far down legitimate paths to win its claim both under the contract with the Joint Venture and with the State of California, why should it undermine its efforts with a shutdown threat that would never have been consummated and which would therefore quickly be shown to be empty and ineffectual.

The Respondent further notes neither of its agents at this meeting had the authority either to initiate or threaten a work stoppage or job shutdown. It notes that the alleged threat, even under the version of events as testified to by the Charging Party's agents, was not initiated by the Respondent's agent but was, in effect, dragged out of Wilson through challenging questioning by Sherfy and that the wording of the alleged threat, that a storm was coming, could not in all events be reasonably taken to be a strike or shutdown threat directed to the Project.

### 3. Resolution of the evidence respecting the disputed events

The Respondent's argument, described above and presented at length on brief, that Representative Ronald Wilson and the Respondent generally had long been embarked on a proper course of action to either negotiate, or by means of contractual process or state intervention, require claimed work to be assigned to Respondent represented employees and therefore had no motive to suddenly threaten a work stoppage that it could not properly and did not in fact undertake, is powerful and persuasive.

Combining those opposing arguments of the Respondent with the burden of proof the General Counsel bears respecting each element of his complaint, the General Counsel faces a particularly difficult task in establishing the alleged threat in this case. The evidence the General Counsel advances is primarily the testimony of Sherfy and Morrow respecting the day's events.[3] The unchallenged testimony that Sherfy called the Joint Venture's representative following the meeting and reported a strike threat is additional evidence that the strike threat was made. However on this record I find the pivot on which this case turns is the resolution of the disputed testimony of the meeting participants respecting the asserted "storm" that was to come.

I observed the testimony of the four meeting participants with special care during the hearing and have reviewed that testimony carefully given my view that the disputed testimony is the heart of the case. Unusually, in my experience in hearing and deciding Board unfair labor practice cases, one witness' testimony in this matter was so persuasive as to carry the case for the advancing party.

I found the testimony of William Sherfy concerning the critical testimony to be particularly credible. His demeanor was outstanding. His memory, while perhaps no better than most layman witnesses, was clear and definite respecting these critical events. Importantly, through the course of his testimony both in response to the direct examination of sympathetic counsel and under skilled cross-examination by the Respondent's counsel, Sherfy demonstrated to an unusual degree, a habit of listening to the question, considering his memory of the events under examination, and answering honestly and directly. I formed the strong impression that Sherfy testified to what he remembered and only what he remembered, as clearly and honestly as he could. Such agenda free testimony is rare indeed in my experience. I specifically credit his testimony including his attribution of the "storm" threat to Wilson in the contested meeting.

I did not find Morrow to be as persuasive a witness. This was so not because he seemed to be less honest than Sherfy, but rather because I concluded his participation in the critical events largely as an observer may well have effected his memory of events and because he did not demonstrate in his testimony the clarity of memory of Sherfy. I do not credit his testimony beyond that corroborated by Sherfy.

The Respondent's agents, Wilson and Clark, were also not in my judgment bad witnesses and did not demonstrate a pattern of evasiveness or failure of recollection. They simply did not match the persuasiveness of Sherfy however. In particular, their denials did not overcome the specific "storm" attribution found above. Based on their demeanor and the record as a whole, I find that Wilson, perhaps impulsively in the frustration of having the Charging Party's agents repeated refusals to sign a contract giving the Respondent the work it believed it was entitled to, made the storm statement. I further find Wilson simply deferred to the institutional interests of his employer and denied making the statement attributed to him. I further find that Clark did not hear the remark made or, as with Wilson above, chose simply to deny having heard it. Their denials are discredited.

### 4. The "Storm" statement as a violation of Section 8(b)(4)(ii)(B) of the Act

Having found the Respondent's District representative told agents of the Charging Party that a "storm" was coming to the Project, I further find that such a remark in the context in which it was made as described above, is a threat to cause a work stoppage at the job. The absence of actual authority of a labor

[3] The parties augmented the record with evidence of events in the days following the contested meeting. While relevant to and considered for the determination of what was said and done at the critical meeting insofar as it cast light on the state of mind of the meeting participants, the subsequent events were of far less significance on this record than the events preceding, during, and immediately after the disputed conversation.

organization's representative to initiate a strike or to threaten to do so, is not a defense to a violation of Section 8(b)(4)(ii)(B) of the Act.

Based on the analysis and cases discussed above, a threat to shut down a general contractor's job in order to pressure a subcontractor to sign an agreement with the union affecting the employees of the subcontractor is improper secondary conduct and violates Section 8(b)(4)(ii)(B) of the Act as alleged in the complaint. I therefore sustain the complaint and find that the Respondent through Wilson on July 2 or 3, 2002, violated Section 8(b)(4)(ii)(B) of the Act

## REMEDY

Having found that the Respondent violated the Act as set forth above, I shall order that it cease and desist therefrom and post remedial Board notices. Further, the language on the Board notices will conform to the Board's recent decision *in Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001), that notices should be drafted in plain, straightforward, layperson language that clearly informs employees of their rights and the violations of the Act found.

On the basis of the above findings of fact and the record as a whole, I make the following

## CONCLUSIONS OF LAW

1. The Charging Party, Tutor-Saliba Corporation, and Tutor-Saliba/Koch/Tidewater, J. V., and each of them, has been at all times material, employers and persons engaged in commerce within the meaning of Section 2(2), (6), and (7) and Section 8(b)(4)(ii)(B) of the Act.

2. The Respondent and MM&P are, and each of them is, and have been at all relevant times labor organizations within the meaning of Section 2(5) of the Act.

3. By threatening to cause a work stoppage on the Richmond-San Rafael Bridge Retrofit Project of the Tutor-Saliba/Koch/Tidewater, J. V., with an object to force or require the Charging Party to recognize or bargain with the Respondent as the representative of the Charging Party's employees when it had not been certified as the representative of such employees under the provisions of Section 9 of the Act, the Respondent violated Section 8(b)(4)(ii)(B) of the Act.

4. The unfair labor practice described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

Based on the above findings of fact and conclusions of law, and on the basis of the entire record, I issue the following recommended[4]

## ORDER

The Respondent, Operating Engineers Local Union No. 3 of the International Union of Operating Engineers AFL–CIO, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to cause a work stoppage on the Richmond-San Rafael Bridge Retrofit Project of the Tutor-Saliba/Koch/Tidewater, J. V., with an objective to force or require the Charging Party to recognize or bargain with the Respondent as the representative of the Charging Party's employees unless such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

(b) In any like or related manner violating the National Labor Relations Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its San Francisco Bay Area offices copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 20, in English and such other languages as the Regional Director determines are necessary to fully communicate with employees and union members, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure the notices are not altered, defaced or covered by other material. Signed copies of the notice shall also be sent to Cross-Link, Inc. d/b/a Westar Marine Services and Tutor-Saliba/Koch/Tidewater, J. V., in sufficient number to allow posting, if the employers are willing, at any facilities on the Richmond-San Rafael Bridge Retrofit Project of the Tutor-Saliba/Koch/Tidewater, J. V., where employee notices are normally posted.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, March 31, 2003

## APPENDIX

### NOTICE TO MEMBERS
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Act prohibits labor organizations at Section 8(b)(4)(ii)(B) of the Act from, among other things:

> Threatening, coercing or restraining any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National labor Relations Act:
>
> Provided, that nothing contained in this clause shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

Put more simply in nonlegal language, a labor organization may not threaten to shut down a general construction project in order to force a subcontractor to recognize or bargain with that labor organization regarding the subcontractor's employees if that union has not been certified by the National Labor Relations as the employees' representative.

The Board found we threatened to shut down the Richmond-San Rafael Bridge Retrofit Project of the Tutor-Saliba/Koch/Tidewater, J. V. with an object to force Cross-Link, Inc. d/b/a Westar Marine Services to recognize and bargain with us as the representative of its employees at a time when we were not those employees certified representative.

The National Labor Relations Board found this to be in violation of the Act and has required us to post this notice and to abide by its terms.

Accordingly,

We give our members, Cross-Link, Inc. d/b/a Westar Marine, the Tutor- Saliba/Koch/Tidewater, J. V. and other neutrals working on the Richmond-San Rafael Bridge Retrofit Project of the Tutor-Saliba/Koch/Tidewater, J. V., the following assurances.

WE WILL NOT threaten to shut down the Richmond-San Rafael Bridge Retrofit Project of the Tutor-Saliba/Koch/Tidewater, J. V. with an object to force Cross-Link, Inc. d/b/a Westar Marine Services to recognize and bargain with us as representative of its employees unless the Board has certified us as those employees' representative

WE WILL NOT in any like or related manner violate the National Labor Relations Act.

OPERATING ENGINEERS LOCAL UNION NO. 3 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS AFL–CIO